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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 850-73

RETAIL CLERKS INTERNATIONAL ASSOCIATION,
LOCAL UNIONS NOS. 128 and 633,

Petitioners,

vs.

LION DRY GOODS, INC.,
and
LASALLE'S DIVISION OF R. H. MACY & CO.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS,
FOR THE SIXTH CIRCUIT.

BRIEF OF RESPONDENTS IN OPPOSITION.

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OPINIONS BELOW.

The opinion of the United States District Court for the Northern District of Ohio, Western Division, is reported at 179 F. Supp. 564. The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 286 F. 2d, 236, and at 47 Labor Relations Reference Manual (LRRM) 2402.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED.

Whether Sec. 301 (a) of the Labor-Management Relations Act gives a United States District Court jurisdiction in an action filed by a labor organization *not* a party to a contract with the respondents and a labor organization *not* recognized or certified as the bargaining agent for employees of the Respondents.

STATUTE INVOLVED.

Sec. 301 (a) of the Labor-Management Relations Act of 1947, 29 U. S. C. Sec. 185 (a), is the only statute with which we are concerned in this case.

It read as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT.

In November of 1957 the appellant unions called a strike against the members of Retail Associates, Inc., a multi-employer association comprised of four downtown department stores in Toledo, Ohio.

The Respondents herein were members of Retail Associates, Inc. [Note: On December 24, 1958, and for

many months prior thereto the multi-employer association of Retail Associates, Inc. was not in existence.]

During the period of the strike, from November, 1957 to December 24, 1958, the appellant Unions were not recognized by the Respondents as the majority representative of the employees of the Respondents.

The appellant Unions do not claim that at the time of the filing of the action in the United States District Court they were recognized as, were certified as, or were the representative of the majority of any unit of employees of either Respondent.

A few days prior to December 24, 1958, a plan was advanced by the Toledo Labor-Management-Citizens Committee (a local mediation agency) whereby it was suggested that if the Respondent Lasalles would re-employ the strikers (the strikers having been permanently replaced), the appellant Unions would disclaim that they represented a majority of the employees of either of the Respondents.

At that particular time Lasalles was the only store where workers were actually out on strike. Also at that particular time employer petitions for an election among the employees of both Respondents were pending before the National Labor Relations Board.

On the basis of this proposal from the mediation agency the employees of Lasalles who left their jobs were offered reinstatement. As the result of Lasalles offering to re-employ these workers, the appellant Unions unequivocally disclaimed the right to bargain for employees of the Respondent employers until such time as they were certified as having been chosen as bargaining representative by a majority of employees of each employer in an election conducted by the National Labor Relations Board.

The petitions for elections were withdrawn. (J. A. 9a, 32a, 44a, 45a.)

At the request of the mediation agency, each of the Respondents herein handed the Chairman of the agency a "Statement of Understanding" and attached thereto, at the agency's request, as Exhibit "A", the wage schedules then in effect in each store and as Exhibit "B" a statement of the company personnel policy and program.

The "Statement of Understanding" from the Respondent Lasalles, together with the aforesaid Exhibits, is to be found at pages 8a through 29a of the joint appendix in the record. The "Statement of Understanding" from the Respondent Lion Dry Goods, Inc. is set forth at pages 32a and 33a of the joint appendix in the record. Exhibits "A" and "B" referred to in the "Statement of Understanding" are the same as those attached to the "Statement of Understanding" given by Lasalles to the mediation agency and set forth in the joint appendix as above indicated.

ARGUMENT.

The issue in this case is, in our opinion, comparatively simple and, to say the least, uniquely narrow. It is impossible, we believe, through an exercise in semantics or in shading the facts, to convert the case into one warranting review by this Court on certiorari.

That this is true is clearly demonstrated by these few facts from the Record (Joint appendix, pages 40a and 41a):

1. The appellant Unions and the Respondents, individually or otherwise, have not engaged in collective bargaining since the strike in November, 1957, with respect to wages, hours, and other terms and conditions of employment pertaining to any employees of either of the Respondents or for the purpose of negotiation of any agreement concerning wages, hours, or other terms of employment, or any questions arising thereunder, or negotiations for the execution of a written contract incorporating therein any agreement negotiated or reached between the parties on any subject matter;

2. None of the rates of pay, wage schedules, terms and conditions of the personnel policy and program or other provisions or conditions contained in the Exhibits attached to the respective "Statements of Understanding" heretofore referred to were negotiated as a result of bargaining or negotiations between either of the Respondents and the Toledo Labor-Management-Citizens Committee acting for or on behalf of the appellant Unions;

3. All of the provisions contained in the aforesaid Exhibits attached to the "Statement of Understanding" given by each of the Respondents to the mediation agency, with one exception not pertinent to this case, were in force and effect prior to December 24, 1958.

From these facts two questions arise, the answers to which are dispositive of this case. These questions, discussed consecutively, are as follows:

Is a statement given to a mediation agency a contract within Section 301 of the Labor-Management Relations Act of 1947 entitling a labor union **which does not represent the employees of the employer** involved the right to maintain an action in a Federal District Court.

The Courts below correctly said No.

(a) Are the statements of understanding of the strike settlement conditions given to the mediation agency by the respondents (Exhibit B in J. A. 8a and Exhibit E, 32a) contracts between employers and a labor organization representing employees as is claimed by the appellant unions?

The appellant Unions filed an action in the District Court under and by virtue of the provisions of Section 301 of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A. Sec. 151, et seq.

So far as it is pertinent to this action, Section 301 of the Labor Management Relations Act of 1947 provides:

> "*Suits for violation of contracts between an employer and a labor organization representing employees* in an industry affecting commerce as defined in this Act or between any such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (Italics ours.)

The relief sought by the appellants in their first cause of action was an order from the Court requiring the defendants to permit *non-employee representatives of the unions* to have access to areas of the stores which are not open to customers.

In the appellants' second cause of action they sought an order requiring the defendant LaSalle's to place two employees, who were returned to work after December 24, 1958 in their *former position classifications,* at stations in the department selected by the employees rather than by management.

The appellants, in bringing their action, relied solely upon the provisions of Section 301 of the Labor-Management Relations Act, *supra,* claiming that there is in existence a contract between the respondents and the appellant labor organizations.

The appellants, in effect, claim that a statement of understanding given to the Toledo Labor-Management-Citizens Committee by each store constitutes a contract within the contemplation of Section 301 of Labor-Management Relations Act, *supra,* and that by reason thereof they, the unions, were not only proper parties to bring such an action in that Court, but that they, as unions, are, as claimed in their first cause of action, entitled to specific performance of an arbitration clause in a collective bargaining agreement.

The appellants further claim, in effect, that they are proper parties to bring this action on behalf of two individual employees of LaSalle's, seeking specific performance of an arbitration agreement.

In other words, appellants assert that there is in existence collective bargaining agreements between them and each of the Respondents and that the collective bargaining agreements contain an arbitration clause for the benefit of the appellants as labor organizations and for the benefit of individual employees of the stores and further, by reason thereof, the arbitrators (LMC) have made decisions which can be enforced by a Federal District Court.

It is the contention of the respondents that a contract as contemplated by Section 301 of the Labor Management Relations Act of 1947 does not exist between the unions and either of the respondents.

It necessarily follows that if there was no contract in existence between either of these employers and the appellant unions, the District Court did not have jurisdiction.

The District Court found that (J. A. 49a and 50a):

1. "The 'statement of understanding' given by each of the defendants to the Toledo Labor-Management-Citizens Committee on December 24, 1958, was a strike settlement statement.

2. "The plaintiffs are not now and were not on December 24, 1958, the recognized majority representatives of the employees of the defendants, or either of them.

3. "The statements of understanding given the Toledo Labor-Management-Citizens Committee are not collective bargaining contracts negotiated by or on behalf of the plaintiffs with either of the defendants.

4. "There is no existing collective bargaining contract between the plaintiffs and either of the defendants."

In order for the District Court to have jurisdiction there must be in existence a collective bargaining agreement between the unions and each of the respondents as is contemplated by the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A. 151 et seq.

This is so because the appellants brought their action pursuant to Sec. 301 of that Act which provides for "suits for violation of *contracts between an employer and a labor organization representing employees* in an industry affecting commerce * * * without respect to the amount in controversy or without regard to the citizenship of the parties."

While Section 301 refers to contracts between an employer and a labor organization representing employees, we do not think there can be any doubt that this means collective bargaining agreements. We are not aware of a reported case which does not, in discussing Section 301 as that section applies to suits between employers and labor organizations, confine its discussion of the rights of either employees or labor unions as those rights arising out of collective bargaining agreements.

This being true, was there a collective bargaining agreement in existence between labor organizations representing employees of the stores and either of the respondents?

We think not.

Sub-section D of Section 8 of Title I of the Labor Management Relations Act of 1947 defines what it means to bargain collectively. It is this:

> "To bargain collectively is a performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, for the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession * * *."

It would appear, then, that a contract between an employer and a labor organization as contemplated by Section 301, *supra*, is a contract covering wages, hours and other terms and conditions of employment negotiated and executed by an employer and a representative of employees *mutually obligated to so negotiate*.

The appellants do not claim that any form of collective bargaining or negotiations with respect to wages, hours, and other terms and conditions of employment or for any kind of an agreement or contract, or any question arising thereunder, ever took place between the appellants and either of the respondents since November 23rd of 1957.

Exhibits B and E (J. A. 8a and 32a) clearly state that the statements of understanding and the contents thereof are not to be construed as giving recognition to the appellants unless at some future time the Union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board. In its Amended Complaint the Union set out that it would not request bargaining rights unless and until it proves its right to represent the employees after being certified as the majority representative as a result of an N. L. R. B. election.

To say that a labor organization which admits that it does not represent a majority of the employees, and which admits that it does not claim recognition as the bargaining agent for employees of the respondents, and which admits it will not request bargaining rights as representative of employees of the respondents, is a party to a collective bargaining agreement, as contemplated by Section 301, defines reason and logic.

This characterization would also apply, it seems to us, to the contention that the statement of understanding of the conditions of the strike settlement is a collective bargaining agreement within the contemplation of Section 301, *supra*.

In the statement of understanding handed to the mediation agency on December 24, 1958 by each of the respondents, it was, we repeat, stated that the Union would

not request bargaining rights or demand recognition until it proved its right to represent the employees as the result of an N. L. R. B. election.

In other words, here was a clear disclaimer of representation rights by the unions. If they do not claim to represent the employees of either of the stores, and will not claim to represent the employees of either until after being certified by the N. L. R. B., a fact which they fail to allege in their Amended Complaint, it would, of course, be impossible for them to be a party to, or beneficiary of, a collective bargaining contract, a necessary prerequisite to be able to sue under Section 301.

It would appear, then, that the lower Court lacks jurisdiction over this action because of the absence of a collective bargaining agreement between the defendant employers and the plaintiff labor organizations.

(b) Did the December 24, 1958 Statement of Understanding Create a Contract Between the Appellees and Their Respective Employees?

If the answer to this question, on the basis of the pleadings and the evidence, stipulated or otherwise, is "Yes," then the lower court lacks jurisdiction under Section 301 of the Labor Management Relations Act of 1947 because *Section 301 of that Act only confers jurisdiction upon the District Court over suits for violation of contracts between an employer and a labor organization representing employees*—at least, so far as Section 301 is pertinent to this case.

If the answer to this question is "No," then obviously the appellants cannot bring this action under Section 301 on behalf of the employees or on any other basis. There would be no jurisdiction in the District Court to hear such a suit.

The law involved in the questions and issues in this case springs from Section 301(a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A. Sec. 185.

That section provides:

> "*Suits for violation of contracts between an employer and a labor organization representing employees* in an industry affecting commerce as defined in this Act or between any such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (Italics ours.)

There have been two landmark cases decided by the United States Supreme Court involving the contract rights that may be enforced in suits brought in the federal district courts under Section 301, and those that may not.

While it is the position of the respondents that Section 301 does not have an application to this action, a consideration of the law as laid down in those cases will be enlightening and of assistance to us here.

These principal cases are:

Association of Westinghouse Employees v. Westinghouse Electric Corp. (1955) 348 U. S. 437, 75 S. Ct. 489, 99 L. Ed. 510;

Textile Workers Union etc. v. Lincoln Mills, (1957) 353 U. S. 448, 77 S. Ct. 912, 1 L. Ed. (2d) 972.

In the first of these *(Westinghouse)* the Court ruled that Section 301 did not give a federal court jurisdiction over a Union's suit for back wages owed individual employees under the *Union's* contract.

In the *Lincoln Mills* case the court held that Section 301 gave a federal court jurisdiction to order specific per-

formance of an arbitration clause in a collective bargaining agreement negotiated by the Union and to which the Union was a party.

The distinction between the two cases apparently was that in the latter case *(Lincoln Mills)* the contractual obligation ran to the Union while in the Westinghouse it ran to individual employees.

These two cases thoroughly discuss the legislative history of Section 301 and the circumstances which give rise to permitting suits in the district courts without regard to the usual jurisdiction requirements.

A reading of the principal cases makes it clear that collective bargaining contracts between a union and an employer were the only contracts intended to be actionable under Section 301 in suits between employers and labor organizations.

In the *Westinghouse* case the court held that the Union could not maintain an action under Section 301 to enforce uniquely personal rights; in this case claims for holiday pay for 4000 employees under provisions of a contract between the Union and the Company.

The right to holiday pay, the court held, was in the employee under his individual employment contract, the contract between the Union and the Company becoming a part of the individual employment contract upon hiring.

The right to sue in these cases arises out of a contract negotiated under the provisions of Federal law—The Labor Management Relations Act of 1947.

—In the concurring opinion of Chief Justice Warren, joined in by Justice Clark, in *Westinghouse* this language is found:

> "Thus the contracts sued upon in Section 301 actions will have been entered into in accordance with federal law * * *."

and again this:

> "Since the contract entered into through provisions of the Labor Act creates rights over which Congress has legislative authority, a breach of the contract is likewise within its power, etc. etc."

In *Lincoln Mills*, for instance, Justice Douglas said that in including Section 301 in the 1947 enactments, Congress was also interested in promoting collective bargaining that ended with agreements not to strike.

> "The agreement to arbitrate grievance disputes," Justice Douglas said, "is the quid pro quo for an agreement not to strike."

The entire tenor of the history, he repeats, indicates that the agreement to arbitrate grievance disputes was considered quid pro quo of a no strike agreement. This very necessary element which went to make up the basis of the Court's holding that a labor organization could maintain such an action is *glaringly* absent here.

In a concurring opinion Justice Burton pointed out that the Union should have the right to maintain an action in these circumstances requiring enforcement of a collective bargaining agreement provision to arbitrate certain grievances since it involved an obligation running to the Union—a Union controversy—and not uniquely personal rights of employees sought to be enforced by a union. Here there is no obligation running to the Union from the employers. (Pars. 5-6 Exhibit B, 9a J. A.)

The Court will notice that none of the compelling factors which give substance to the right of Unions to bring actions under Section 301 are present in this case, particularly a contract between a union representing employees of these employers within the meaning of the Labor-Management Relations Act of 1947 and the employers.

CONCLUSION.

In summary and in conclusion we suggest the following in support of our position that the lower court was correct in holding that it lacked jurisdiction:

1. Section 301 of the Labor-Relations Management Act contemplates contracts in effect and negotiated by parties obligated and competent to negotiate and contract.

2. The Unions here are not legally qualified to be a party to a contract unless and until they are *chosen by the employees* as their bargaining representative.

3. To hold that there was a contract here between these unions and the employees would be a clear violation of the rights guaranteed to employees by Section 7 of the Labor Management Relations Act of 1947 to be represented through representatives of their own choice or the right to refrain from engaging in any activity involving collective bargaining through labor organizations.

4. If these statements of strike settlement conditions were held to be a labor contract between the employers and the Unions, both would be guilty of violation of Sections 8(a)(1) and (2) and 8(b)(1)(A) of the Labor-Relations Management Act by entering into a contract when the Union had not been authorized by a majority of employees to act as their representative.

5. Inasmuch as Section 301 is expressly limited to suits for "violation of contracts between an employer and a labor organization representing employees * * *," it seems conclusive that the District

Court's judgment was correct. The relief sought should be denied and costs of this appeal assessed to the appellants.

Respectfully submitted,

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8. District Court's Findings.

The court's findings of fact provided (R. 49):

1. *The statement of understanding* given by each of the stores to the Toledo Labor-Management Citizens Committee *was a strike settlement statement.*

2. The unions were not the majority representatives of the employees of either of the stores.

3. The statements of understanding *are not collective bargaining contracts negotiated by or on behalf of the unions* with either of the stores.

4. *There was no collective bargaining contract between the unions and either of the stores.*

The Court's conclusions of law were:

1. *The statement of understanding* given by each store on December 24th *is not a contract as is contemplated by Section 301(a)* of the Act, and

2. The court is without jurisdiction over the subject matter of the action. (Emphasis ours.)

The United States Circuit Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court. (R. 52.)

SUMMARY OF ARGUMENT.

1. At the outset we suggest the question of mootness in view of the fact that Locals 128 and 633, Petitioners here, ceased to exist as of January 1, 1960. Inasmuch as this information came to the attention of counsel at a late date, we take this means of making the Court aware of these facts, as is our duty.

The question suggested is whether the action abated by the demise of the Petitioners and whether it can be revived by the substitution of a new party so as to entitle a new, and different, local Union to all rights and privileges Locals 128 and 633 would have had, if they still existed, should the Court hold that the relationship between the stores and the L-M-C created a Section 301(a) contract to which the Unions became party and, by the same token, make a new local Union and its assets, under such a result, responsible for all the liabilities which could accrue therefrom prior to, and since, the demise of Locals 128 and 633.

2. Beyond the question of abatement and mootness, the only issue before this Court is whether the United States District Court had jurisdiction to entertain the action filed therein by the labor unions, on the claim of a right to do so by virtue of the provisions of Section 301(a) of the Labor-Management Relations Act. The jurisdictional question revolves around the question whether the Unions were party to a contract between an employer and a labor organization as contemplated by the Act.

3. The lower courts correctly held, referring only to suits between labor organizations and employers, that the contracts contemplated by Section 301(a) are contracts which result from collective bargaining between an employer engaged in commerce as defined in the Act and a labor organization representing the employees of such an

employer. The record here does not justify the interpretation given to the decisions of the lower courts by the Petitioners that the courts held that Section 301(a) suits are limited to actions which arise out of contracts between labor organizations and employers. Suits for violations of contracts between labor organizations are also suable under Section 301(a).

4. Considering the legislative history and cases decided by this Court, Section 301(a) actions involve contracts arising out of the practice and procedure of collective bargaining, a principal purpose regulated and safeguarded by the Labor-Management Relations Act. These actions would not, we submit, extend to the enforcement of understandings which are not made within, but completely beyond, the scope and framework of the Act. Section 301(a) should not be extended to an understanding which is not between a labor organization authorized to represent the employees of the employer but, instead, is with a third party who was not acting in place of, or on behalf of, the labor organizations involved and did not engage in collective bargaining with respect to wages, hours and other terms and conditions of employment with the employer.

5. The statement given to the Toledo Labor-Management Citizens Committee by Respondents was to record their understanding of the termination of the recognition strike the Petitioners had been conducting against Lasalle's and included therein the scope of the services the L-M-C was to make available to *all* employees of Lasalle's and the Lion Store, limited only by employment relationships covered by contracts between the stores and other labor unions. The statement of understanding between the Respondents and the L-M-C is not a Section 301 contract

for, in our opinion, Section 301 contemplates contracts between parties mutually obligated to engage in collective bargaining and legally competent to be a party to such contract.

It would seem that when the entire Labor-Management Relations Act is considered, a Section 301 contract would be one which would, at least, be between an employer engaged in commerce and a labor organization representing such employees by reason of being either certified or recognized as the bargaining agent. Such a contract would also, it seems to us, be one which defines with particularity the bargaining unit to which representation rights are claimed, or accorded, and would be one which contained the precise terms resulting from collective bargaining, as defined by the Act.

Such a contract should also, in order not to run contrary to the Act, be for a definite term and be subject to renegotiation at reasonable intervals and would be one one which resulted from the performance of a mutual obligation of an employer and the representatives of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment.

The statement given by the stores to the L-M-C stating the stores' understanding of the basis on which the strike was terminated fails to meet any of the criteria which appear to be necessary to have a contract intended by the Labor-Management Relations Act and be suable under Section 301(a).

6. Although *the petitioners did not base their District Court suit on a members only contract between the unions and the stores,* the Petitioners now assert that they are party to a members only contract and as such have a right to maintain the action in the District Court.

There is nothing in the statements of understanding given to the L-M-C by the stores to justify any assertion that the assurances given to the L-M-C concerning the treatment to be accorded their employees, and the services by L-M-C made available to individual employees, as set forth in the so-called arbitration provision (Item 4, R. 9), are to be limited to members of Locals 128 and 633. In fact, the opposite is apparent, i.e., the understanding between the stores and the L-M-C was intended to apply to all employees at Lasalle's and the Lion Store. This being true, a holding that these local unions were party to a Section 301(a) contract would necessarily mean that their representation rights would extend to all the employees of both stores. This Court recently held, *Ladies Garment Workers Union v. N. L. R. B.*, 366 U. S. 731 (1961), that a contract giving a union representing only a minority bargaining rights for all employees violated the Act and was invalid in its entirety.

ARGUMENT.

I. Has This Proceeding Become Moot?

During the later stages of preparing this brief counsel for the Respondents for the first time became aware of certain facts which suggest the question of mootness. As of January 1, 1960 the Petitioners here, Locals 128 and 633, no longer existed, according to the records of the United States Department of Labor, Bureau of Labor Management Reports.

Report No. 052080, filed sometime after March 18, 1960, by Local 128, contains the information that "as of January 1, 1960, this Local merged with Locals 633—954 and District Council No. 6, to form *a new Local 954.*" The report of Local 633, No. 052082, contained the same information.

The question suggested then is whether the action commenced by Locals 128 and 633 abated when a new Local was formed and the Petitioners here went out of existence.

II. District Court Jurisdiction Only Issue.

On the basis of the judgments of the lower courts, the issue here is necessarily a very narrow one. Simply stated, it is whether the unions had a right to maintain an action in the District Court under authority of 301(a) of the Labor-Management Relations Act, 29 U. S. C. Sec. 185(a), on the basis that they were party to a contract between an employer and a labor organization.

Therefore, we will attempt to confine our argument to the issue of jurisdiction and not consider here issues which are secondary to, and dependent upon the validity of the unions' claim that they are party to such a contract.

These secondary issues would include such questions as whether the unions had a right to bring suit for contract

enforcement as in *Textile Workers v. Lincoln Mills*, 353 U. S. 448 or whether that right would be limited to employees as in *Assn. of Westinghouse Employees v. Westinghouse Electric Corp.*, 348 U. S. 437; whether the unions, as unions, had a right to grieve or whether that right was limited to individual employees under item 7 (R. 10); whether the claim of arbitration rights was governed by contract, as in *Steelworkers v. American Manufacturing* (1960), 363 U. S. 564; whether the so-called arbitration clause is susceptible to an interpretation that covers the asserted dispute, as in *Steelworkers v. Warrior Navigation Co.* (1960) 363 U. S. 574; whether the so-called arbitrators decision was based on the collective bargaining contract, as in *Steelworkers v. Enterprise Wheel and Car Corp.* (1960) 363 U. S. 593, and other issues of fact and law raised in the answer to the complaint.

III. Scope of Lower Court Decisions.

At the outset it must be recognized that Section 301(a) is a special and limited grant of jurisdiction and must, in accordance with the settled rules of statutory construction, be strictly construed. It provides that actions may be brought in any District Court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to the citizenship of the parties in two circumstances: (1) suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce, and (2) suits for violation of contracts between any such organizations.

The lower courts in this case were agreed that the contracts with which Section 301(a) concerned itself, *as between an employer and a labor organization representing employees in an industry affecting commerce,*

were contracts resulting from collective bargaining as contemplated by the provisions of the Act.

We do not claim that Section 301(a) suits are limited to those arising out of violation of contracts between an employer and a labor organization. We believe Section 301(a) also applies to suits for violation of *contracts between labor organizations.* We *do not* believe that the courts below held, or intended to hold, that the only contracts suable under Section 301(a) were contracts between an employer and labor organizations representing employees in industries affecting commerce.

While it is true that the lower courts did say that they were of the opinion that collective bargaining contracts between a union and an employer were "the only contracts" intended to be actionable in a District Court of the United States under the provisions of Section 301(a), we believe that it can be fairly stated that both of the courts were referring only to the type of contract which must be in existence between the employer and a labor organization. It seems clear that the lower courts' statement that collective bargaining contracts were the only contracts intended to be actionable under the provisions of Section 301(a) applied only to that portion of Section 301(a) relating to contracts between an employer and a labor organization. In Judge Kloeb's memorandum opinion (R. 48) he says:

> "None of the factors which give substance to the rights of unions to bring actions under Section 301 are present in this case, and particularly a contract between plaintiffs and defendants."

IV. What Kind of Contracts Did Congress Intend to be Actionable Under Section 301(a)?

The unions based their right to bring this action on Section 301(a) of the Act (R. 3) which provides *inter alia* for:

> "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce."

Such suits may be brought without regard to the amount in controversy or the citizenship of the parties only if the plaintiff meets the test in (a) of Section 301, i.e., in our case, being a party to a contract between an employer and a labor organization representing employees in an industry affecting commerce.

At the threshold of this question, the logical source of information, it would seem, would be the Congressional Record where the legislative history of the Labor-Management Relations Act of 1947 makes it clear that when Congress passed that Act its purpose was to establish a framework within which the rights of labor and management were guaranteed and protected in furtherance of the policy of encouraging the practice and procedure of collective bargaining.[12]

Senator Taft, in answer to a proposal during the Senate debates that the measure being considered by the Senate be replaced by separate bills, each to include only the matter within the separate Titles of the proposed Act, had this to say (93 Cong. Rec. 4141):

> "I want to make one statement to show that the pending bill relates to one question. * * *. First, we have Title I which entirely rewrites the Wagner Act. Of course, the primary purpose of that Act is to assure

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[12] Section 1 of Title I of the Act.

collective-bargaining agreements between employer and employee.

"In Title II we change the mediation procedure. * * *. But what is the purpose of mediation? The purpose of mediation is to bring about collective bargaining agreements between employer and employees.

* * * * *

"What is the purpose of Title III? The purpose of Title III is to give the employer and the employee the right to go to the federal courts to bring a suit to enforce the terms of a collective bargaining agreement—exactly the same subject matter which is contained in Titles I and II. It is impossible to separate them."

In 93 Cong. Rec. 4262 we find this further statement by Senator Taft:

"Finally, we have a provision in Title III for bringing a lawsuit for breach of contract. Breach of what kind of contract? Breach of contract for collective bargaining."

On the same day Senator Smith told the Senate (93 Cong. Rec. 4281):

"And now we come to Title III, which is very brief, and merely provides for suits by and against labor organizations, and requires that labor organizations, as well as employers, shall be responsible for carrying out contracts legally entered into as a result of collective bargaining. That is all Title III does. * * *."

Representative Sabath in a vitriolic attack on the Conference Report on the day the House accepted the terms of the agreement between the Senate and House, placed the following comment in the record at page 6389 of 93 Cong. Rec.:

"Suits by and against unions"

"Waives present jurisdiction requirements in Federal courts of diversity of citizenship and amount in controversy when suit involves breach of collective bargaining contract."

When the House was considering the provision in H. R. 3020 which became Section 301(a), Representative Barden directed the following to Representative Hartley, the sponsor of the Bill in the House (93 Cong. Rec. 3656):

"In asking the question I want it understood that it is intended to make a part of the record that may thereafter be referred to as history of the legislation.

"It is my understanding that Section 302, the section dealing with equal responsibility under *collective bargaining contracts* in strike actions or proceedings in district courts contemplate not only ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances * * *." (Emphasis ours)

Representative Hartley, in response, said:

"The interpretation that the gentleman has just given of that section is absolutely correct."

When the Senate was first considering Senate Bill 1126, later tabled when the Senate amended H. R. 3020, it had in it the basic provisions of 301(a) as enacted. Senator Taft, in his opening statement explaining Senate Bill 1126, said (93 Cong. Rec. 3839):

"Title III of the Bill, on page 53, makes unions suable in the federal courts for violation of contracts * * *."

At 93 Cong. Rec. 4033, Senator Murray, in discussing the provisions of theSenate Bill said:

"Section 301 of the bill gives the federal district courts broad jurisdiction to entertain suits for breach of collective bargaining contracts in industries affecting interstate commerce * * *."

Senator Hatch, in discussing the proposed Act on May 12, 1947, said:

"I neglected to mention Title III which provides for suits against unions in their common name, for violation of collective bargaining contracts. * * *."

Then in the House minority report, No. 256 on H. R. 3020 in referring to Section 302, which became 301 of the Act, we find this:

"Section 302 of Title III has the dual purpose first of giving the Federal courts jurisdiction without regard to the amount in controversy, to entertain actions involving violations of collective bargaining agreements affecting commerce or where the court otherwise has jurisdiction of the cause."

In Senate report No. 105 on S. 1126, 80th Congress, first session, there are two references to the provisions of Section 301. The first is this:

"The committee Bill makes collective bargaining contracts equally binding and enforceable on both parties. * * *. and

"Section 301 is the only section contained in this Title. It relates to suits by and against labor organizations for breach of collective bargaining agreements * * *."

In the Senate Majority Report No. 105, Pt. 2, on S. 1126 we find this:

"Section 301 of Title II of the Bill gives the Federal District Courts broad jurisdiction to entertain suits for breach of collective bargaining contracts in industries affecting interstate commerce."

When the House passed H. R. 3020, the section under consideration here read this way:

"302(a) Any action for or proceeding involving a violation of an agreement between an employer

and a labor organization or other representatives of employees may be brought by either party in any District Court of the United States having jurisdiction of the parties without regard to the amount in controversy, if such agreement affects commerce, or the court otherwise has jurisdiction."

When the Bill passed in the House reached the Senate, the Senate tabled its own Bill S. 1126 and amended H. R. 3020 by striking out practically everything but the Titles and inserting in lieu thereof the parallel provisions of S. 1126. The Senate amendment read this way:

"301(a) Suits for violations of contracts concluded as a result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce as defined by this Act, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Section 301(a) in its present form was agreed upon in the conference between the Senate and the House and adopted.

"Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined by this Act, *or between any such labor organizations*, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

(Portion emphasized by us appears in the law for the first time.)

During the Senate debates on the conference agreement Senator Taft read into the record a summary in detail of the principal differences between the conference agreement and the Bill passed by the Senate which con-

tained the following reference to Section 301. (93 Cong. Rec. 6445.)

> "Section 301 differs from the Senate Bill in two respects. Subsection (a) provides that suits for violation of contracts between labor organizations, as well as between a labor organization and employers, may be brought in the federal courts."

The petitioners' claim that Congress chose the term "contracts" deliberately and rejected the restrictive term of "collective bargaining contract" in its final draft of Section 301(a) appears groundless in light of this explanation by Senator Taft. It is clear that Congress changed the term "collective bargaining contract" to the word "contract" in the final version only because the addition of a provision for suits for violation of contracts between labor organizations made the change necessary in order that Section 301(a) be applicable to both situations.

In discussing Section 301(a) the House Managers' Report (93 Cong. Rec. 6380) pointed out that the original version of the House bill provided for such suits "if such agreements affect commerce." Then the report goes on to say:

> "Under the Senate amendment the jurisdictional test was whether the employer was in an industry affecting commerce or whether the labor organization represented employees in such an industry. The test contained in the Senate amendment is also contained in the conference agreement rather than the House bill which required that the contract affects commerce."

Thus the House Managers' Report makes it clear that in accepting the jurisdictional tests of the Senate bill, Sec. 301(a) was to provide a remedy for *suits* for the violation of contracts *between an employer* who was *engaged* in an industry affecting *commerce and a labor organization* which represents employees *in such an industry*.

Transposed over into our situation, this would mean, then, that to meet the jurisdiction test of Section 301(a) the labor organizations here would have to be labor organizations which represented employees (as that term is used in the Act) of Lasalle's or the Lion Store, each an employer in an industry affecting commerce.

The appendix to the dissenting opinion of Justice Frankfurter in *Textile Workers Union of America v. Lincoln Mills of Alabama,* 353 U. S. 448, 485, etc. is a comprehensive legislative history of the Labor-Management Relations Act. A reading of this appendix leaves one with the inescapable conclusion that the number one objective in the enactment of Section 301(a) of the Act was to make unions suable as an entity in the same manner as employers are subject to suits, with only the assets of the union liable for any recovery against the unions.

Preliminary to deciding the question of what substantive law was to be applied for the enforcement of *collective bargaining* agreements, this Court in *Lincoln Mills,* 353 U. S. 448, in construing Section 301(a) considered the nature of the problem with which Congress intended to deal. Justice Douglas, after referring to the decision rendered by Judge Wyzinski in *Textile Workers Union v. American Thread Co.,* 113 F. Supp. 137, said: (451):

> "That is our construction of 301(a), which means that the agreement to arbitrate grievance disputes, *contained in this collective bargaining agreement,* should be specifically enforced." (Emphasis ours.)

Justice Douglas in analyzing the legislative history of the Act pointed out (453) that both the Senate and the House indicated "a primary concern that unions as well as employees should be bound to collective bargaining

contracts" and "a concern with a procedure for making such agreements enforceable in the courts by either party."

Congress was also interested in promoting collective bargaining that ended with agreements not to strike, Justice Douglas said, 453, and 454, "thus collective bargaining contracts were made 'equally binding and enforceable on both parties.'" "Plainly," Justice Douglas said, "the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike."

Parenthetically we point out that neither item 7 of the statement of understanding between the stores and the L-M-C (R. 10) or the statements in their entirety (R. 9, 32) come within the areas discussed by Justice Douglas —collective bargaining agreements containing an agreement to arbitrate in return for an agreement not to strike.

The legislative history and this Court's decision in *Lincoln Mills, supra,* leads us to the answer that Congress intended that a contract to be actionable under Section 301(a) must be one which is the result of collective bargaining between an employer in commerce and a labor organization representing the employees of that employer.

V. Was There a Section 301(a) Contract Between Either Of the Stores and the Unions?

A point of beginning in considering whether there was a Section 301(a) contract between either of the stores and labor organizations representing employees in an industry affecting commerce is to evaluate the relationship of the parties to the suit at the time the strike at Lasalle's was terminated on December 24, 1958.

On November 23, 1957 the unions chose to abandon multi-employer collective bargaining and demanded bargaining rights on an individual store basis. In their efforts

to force Lasalle's to recognize the unions as bargaining agents for Lasalle employees, the union struck that store on November 23, 1957. The Lion Store, on whom similar bargaining demands had been made, was not struck. From November 23, 1957 through December 24, 1958 the unions were able to prevent a vote by the employees on both a three-store and single-store basis.[13] During this time the strike against Lasalle's continued—over bargaining rights, not economic issues.

It is conceded that the unions and Lasalle's have never engaged in collective bargaining. This is also true as to the Lion Store. It was also agreed that neither of the stores engaged in any collective bargaining with the L-M-C, as a representative for the unions or any employees of either store. (R. 40, 41.)

The peculiar facts of this case and the legislative history heretofore set forth compel the conclusion that the lower court was right when it said (R. 47) that the Act in lodging authority in any District Court of the United States, "contemplates such authority to be exercised where there has been a violation of a contract that has been entered into between an employer and a labor organization representing employees in an industry affecting commerce." The Act, the Court continued on to say, "contemplates a collective bargaining agreement."

A collective bargaining contract, as contemplated by the Act and, it follows, by Section 301(a) is a contract covering wages, hours, and other terms and conditions of employment negotiated and executed by an employer and a representative of the employees *mutually obligated to so negotiate*. That this is so seems evident from the definition of collective bargaining set forth in subsection (d) of Section 8 of Title I of the Act where it says:

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[13] Footnotes 4, 6, 7.

"To bargain collectively is a performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, for the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, such obligation does not compel either party to agree to a proposal or require the making of a concession * * *."

It would seem to follow that the contracts contemplated to be actionable under Section 301(a) would be those which meet certain minimum criteria such as being a contract between an employer and a labor organization which was either certified, recognized or authorized to act as the bargaining agent for the employees of such an employer and a contract which precisely defines the bargaining unit and a contract characterized as a labor contract, one which was the result of agreements reached through collective bargaining.

Other criteria for actionable Section 301(a) contracts would be that they be for a definite term and be open for renegotiation by employee representatives and employers at reasonable intervals and be agreements which resulted from a meeting of the minds of persons legally competent to enter into such contracts.

Measured against the circumstances out of which the understanding between the stores and the L-M-C arose and these criteria, the lower courts correctly held that the unions were not party to a Section 301(a) contract.

To say that the statement given to the L-M-C by the stores to record the conditions upon which the strike over representation and bargaining rights was terminated is a contract which can be specifically enforced in the District

Court by unions which do not, and have not, represented employees, would not, it seems to us, effectuate the purpose of the federal labor policy but, on the contrary, would be in contravention thereof.

It would impose upon all the employees of the stores a representative not selected by them and impose on the employer an obligation to recognize the unions as the representatives of the employees in the "continuous collective bargaining process" as this Court characterized grievance and arbitration procedures in *Steelworkers v. Warrior Navigation Co.*, 363 U. S. 574 (1960).

On the basis of the uncontradicted record that the unions had never been the bargaining representative of the employees of either of the stores and further that there had been *no* collective bargaining by the unions or anyone else with the stores and in view of the result which would follow, it would seem clear that to construct a Section 301(a) contract out of these circumstances would not only conflict with national policies but with a most recent decision of this Court; *Ladies Garment Workers Union v. N. L. R. B.*, 366 U. S. 731 (1961).

VI. Members Only Contract Here Would Constitute Unions Representative for All Employees.

The Petitioners argue (Pet. brief 24) and conclude that the lower courts were guilty of reversible error by indicating, if not holding, that only a majority or certified union may enforce a contract under Section 301. The Petitioners admit they arrived at this conclusion by assuming what they (the Petitioners) think the court's reasons would have been had the courts articulated their reasoning.

We suggest that there is no basis for such liberty being taken with the decisions of the lower courts. The judg-

ment of the District Court as set out in the opinion was (R. 48):

> "We are of the opinion that collective bargaining contracts between a union and an employer were the only 'contracts' intended to be actionable in a District Court of the United States under the provisions of Section 301(a), and that none of the factors which give substance to the rights of Unions to bring actions under Section 301 are present in this case, and particularly a contract between plaintiffs and defendants. * * *"

There is not one word in the judgment of the Circuit Court which justifies the assumption made by the Petitioners. (R. 52.)

Starting from the conclusion they reach by the use of the assumed, but false, premise, the Petitioners proceed to argue that contracts between minority unions for their members only and employers are enforceable under Section 301(a). Without going into an extended discussion of the merits of such a proposition we think it sufficient to say that if minority members only contracts are enforceable under Section 301(a), they too would be required to be contracts concluded as the result of collective bargaining between an employer and Union.

If the understandings between the stores and the L-M-C were held to be contracts within the meaning of Section 301(a), it would necessarily follow that the contracts here would be between labor organizations admittedly representing only a minority and each of the stores. Such a decision would give these minority labor organizations representation rights for *all* of the employees of the stores, contrary to the rights guaranteed and protected by Section 7 of the Act and would be in direct conflict with this Court's recent holding in *Garment Workers v. N. L. R. B.*, 366 U. S. 731 (1961).

In that case this Court invalidated the entire collective bargaining agreement because the employer recognized the union as the exclusive representative of the employees on the honest though mistaken belief that the union was the majority representative.

If the understandings here between the stores and the L-M-C are held to be contracts within the contemplation of Section 301, it would result in bringing into existence the exact situation condemned in the *Ladies Garment Workers' Union Case, supra.*

This is so because the understanding between the L-M-C and the stores *was not* restricted to those employees who were or are members of the Unions or restricted to strikers at Lasalle's.

Employees of the Lion Store had never been on strike but they would be affected by a ruling that these Unions have a right to maintain a Section 301(a) suit. The understanding between the stores and the L-M-C was intended and did cover all employees of the stores not covered by contracts between the stores and other unions. In the complaint filed in the District Court, the Unions do not allege or base their action on a members only contract.

A decree holding the understandings between the stores and the L-M-C to be Section 301 contracts would not only include the representation of all employees, but such a decree would grant the Unions such representation rights in perpetuity, or at least until such time as the Unions asked for an N. L. R. B. election. This is so because there is no time limitation within which the Unions must ask for an election (item 6, R. 10) in an effort to become the certified bargaining agent for the employees of the stores.

VII. In Re Petitioners Authorities.

We have been unable to find a reported case, involving a suit between an employer and a labor organization, that did not arise out of a collective bargaining contract, including the two relied upon by the Petitioners; *Lodge No. 12 International Ass'n. Machinists v. Cameron Iron Works*, 257 F. 2d 467 and *Ferrand Optical Co. v. Electrical Workers, Local 475*, 143 F. Supp. 527.

In each of those cases there was a collective bargaining contract in force when the strikes out of which the settlements grew started. In *Machinists v. Cameron*, the strike occurred during negotiations on a wage reopener only clause in the contract. There the court held that the dispute which arose out of the strike settlement was a proper subject of arbitration *under the collective bargaining agreement between the parties*. In the *Ferrand* case a strike occurred over a seniority dispute during the term of a collective bargaining contract. The representative of the employees settled this dispute and the suit was for injunction for the violation of a no-strike clause in *the collective bargaining agreement*.

CONCLUSION.

The decisions of the lower courts were, we assert, in harmony with the letter and intent of the Labor-Management Relations Act and consistent with the purpose of the original understanding of the terms upon which the strike against Lasalle's was terminated. Therefore the judgment of the lower courts *should be affirmed*.

Respectfully submitted,

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